

Native Hawaiian Law Training

Hawaiian History: Foundations for Kuleana

HAHAI PONO I KE ALA KUKUI ME KA HULI AO
PURSUE THE PATH OF ENLIGHTENMENT THROUGH JUSTICE

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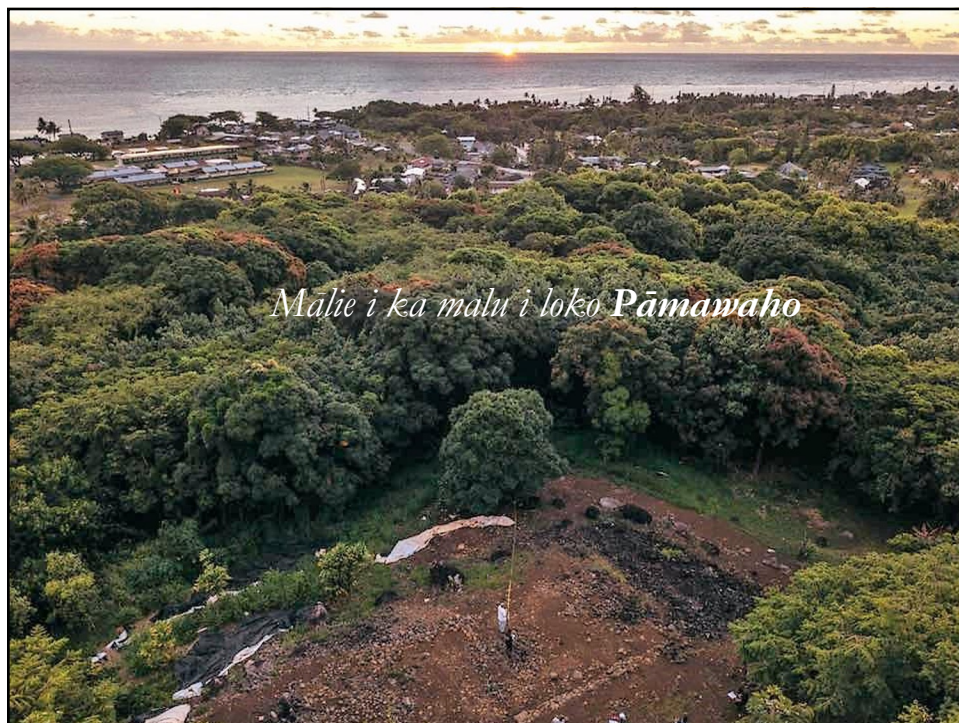
Hahai Pono i ke Ala Kukui me ka Huli Ao
Pursue the Path of Enlightenment Through Justice

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*E'ō kama'āina, e mau nā **Limahana** o kēia 'āina ē . . . A 'oia*



Hawaiian Islands Land Trust, Ko'olauloa Hawaiian Civic Club, Hau'ula Community Association, Legacy Lands Conservation Commission, and Clean Water & Natural Lands Fund Commission

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Take Aways

1. The system of land ownership in Hawai'i is unique and different from land ownership in the U.S. - How? Why?
2. Lands “owned” by the State of Hawai'i are Hawaiian National Lands.

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Kānaka 'Ōiwi Rights are Rooted in Kuleana/Responsibility For the Lands of Our Ancestors



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Aloha 'Āina . . . Love the Land



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The traditional land
system evolved to provide
stewardship of natural
resources of the land

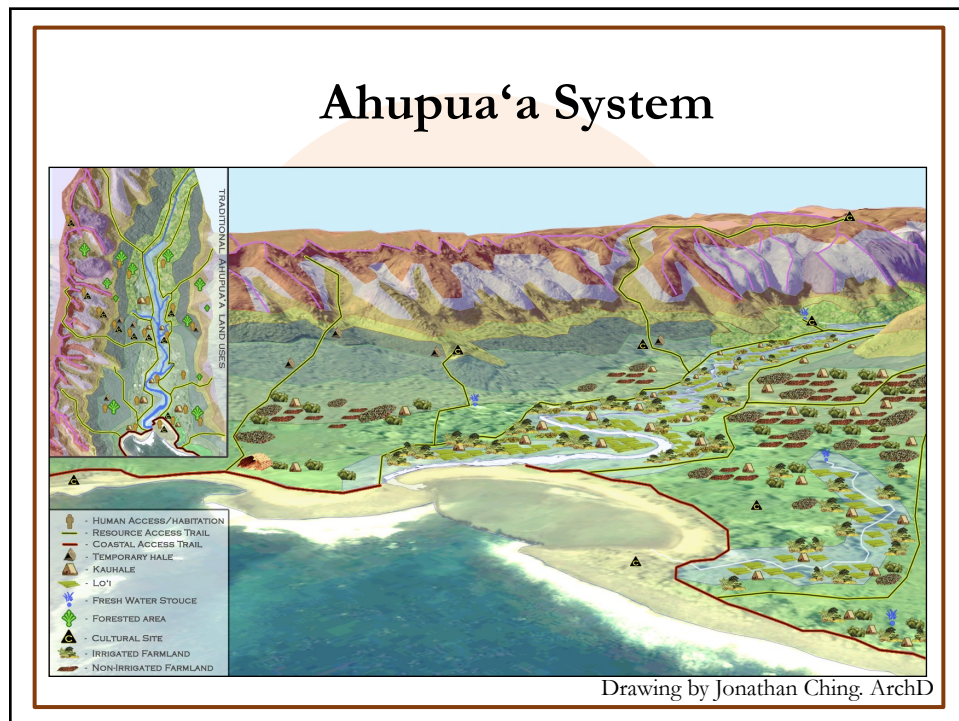


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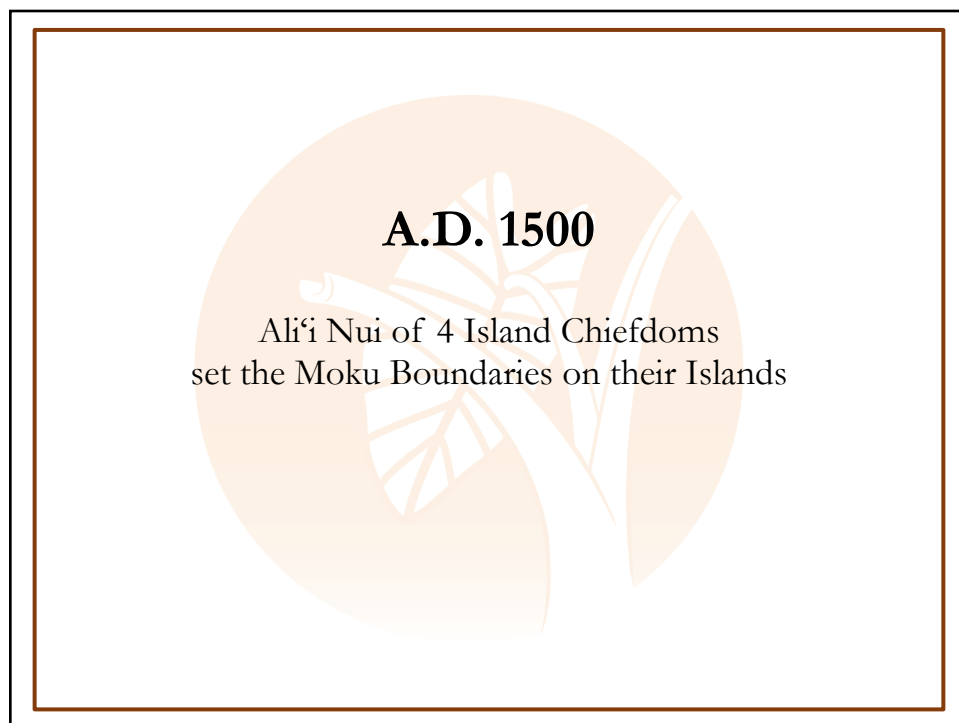


... and the Ocean

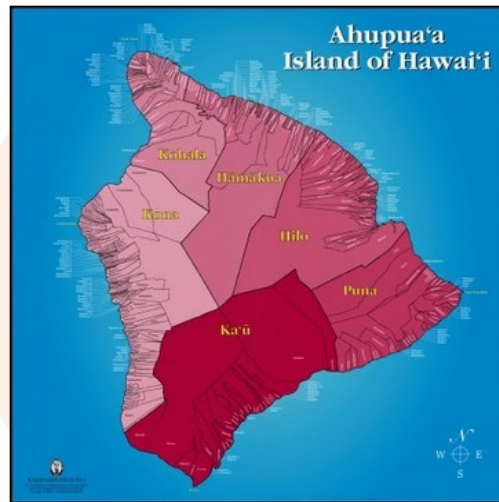
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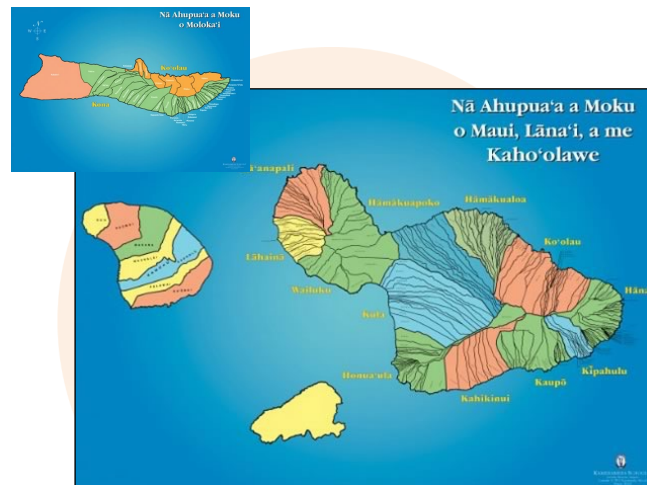


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Līloa

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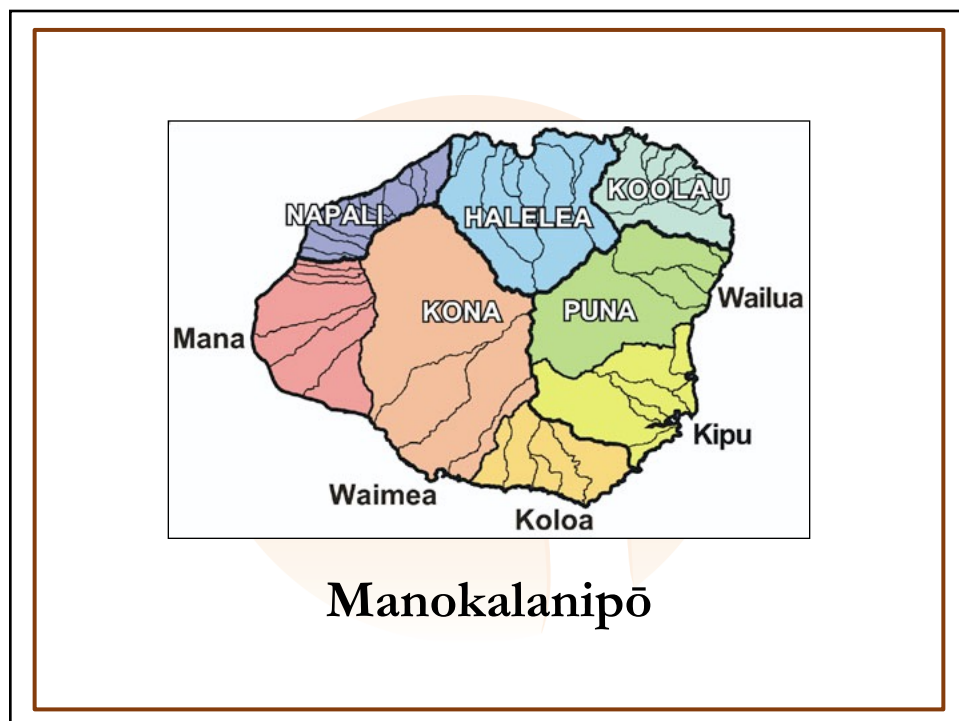


Pi'ilani

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King Kamehameha III and the Council of Chiefs
Established a Unique Hawaiian
System of Private Ownership of Land



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They reserved
traditional and
customary rights
of the makaʻāinana
in the land

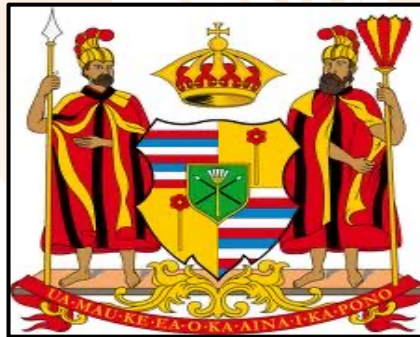


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Step 1: 1839 Declaration of Rights

Ua hoomalu ia ke kino o na Kanaka a pau, a me lo lakou aina, a me ko lakou mau pa hale, a me ko lakou waiwai a pau;

Protection is hereby secured to the persons of all the people, together with their lands, their building lots and all their property.



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Step 2: 1840 Constitution

Kamehameha I, o ia ke poo o keia aupuni, a nona no na aina a pau mai Hawaii a Niihau, aole nae nona pono

Kamehameha I, was the founder of the kingdom, and to him belonged the land from Hawai'i to Ni'ihau, though it was not his own private property.



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1840 Constitution (cont.)

no na kanaka no, a ma na aliʻi, a o Kamehameha no ko
lakou poo nana e olelo i ka aina.



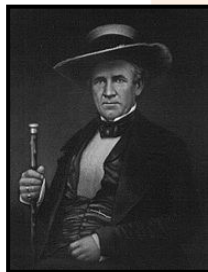
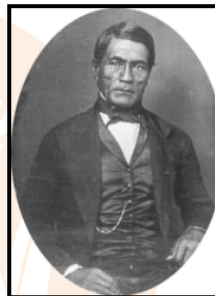
It belonged to the people, and the chiefs in common, of
whom Kamehameha I was the head, and had the
management of the landed property.

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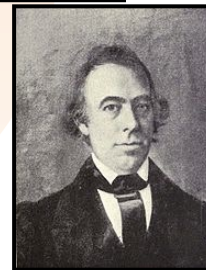
Step 3: Board of Commissioners to Quiet Land Titles



John Papa ʻŪi
Zorababella
Kaʻauwai



James Young Kanehoa



William Richards

John Ricord

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Step 4:
February 14, 1846
Commissioners
issued notice in The
Polynesian
newspaper

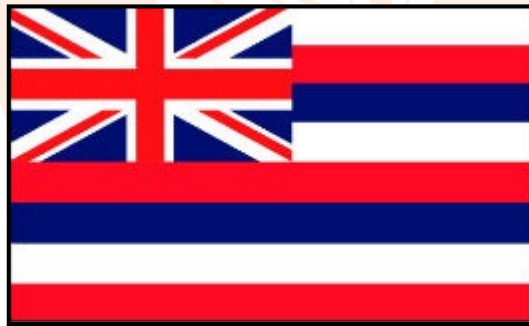
Deadline for
Native claims to be filed:
February 14, 1848



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Step 5: October 26, 1846

Principles adopted by the Board
Of Commissioners to Quiet Land Titles
in their adjudication of claims



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It being therefore fully established, that there are but three classes of persons having vested rights in the land:

1st, the government,
2nd, the landlord, and
3rd, the tenant.



It next becomes necessary to ascertain the proportional rights of each.

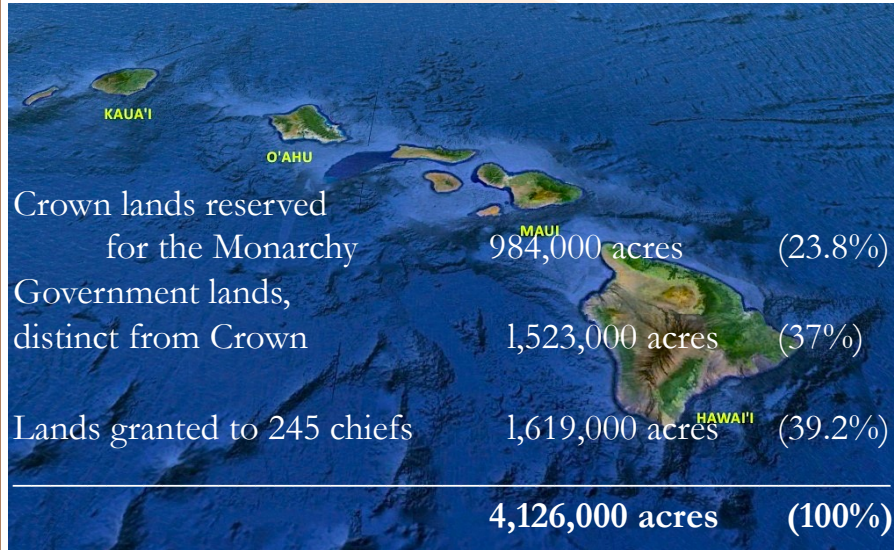
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According to this principle, a tract of land now in the hands of a landlord and occupied by tenants, if all parts of it were equally valuable, might be divided into three equal parts, and remain in the hands of the King, as his proportional right allodial title to one then be given to the lord, and the same title be given to the tenants of one third, and the other one third would remain in the hands of the King, as his proportional right.



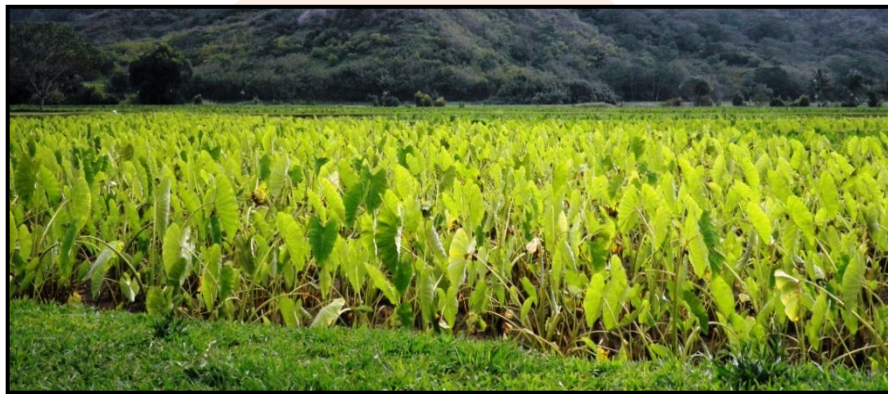
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Step 6: 1848 Ka Māhele



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“Koe wale no na kuleana o na kanaka
e noho ana ma ua mau aina la”



*“reserving only the right of the people
who live on the aforementioned lands”*

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Step 7: Filing of Claims by February 14, 1848 awarded under the 1850 Kuleana Act extended to May 1, 1854

8,205 Hoa'āina
or 29% of the
adult males
got 28,600 acres,
less than
1% of the lands



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The Hoa'āina never separated their share out of the
Crown, Government, or private lands
THESE RIGHTS ARE RESERVED



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Basis of Claim by Prince Jonah Kūhiō Kalanianaʻole

- To reserve Crown Lands for the Native Hawaiian people to homestead.
- 1921 Hawaiian Homestead Act.



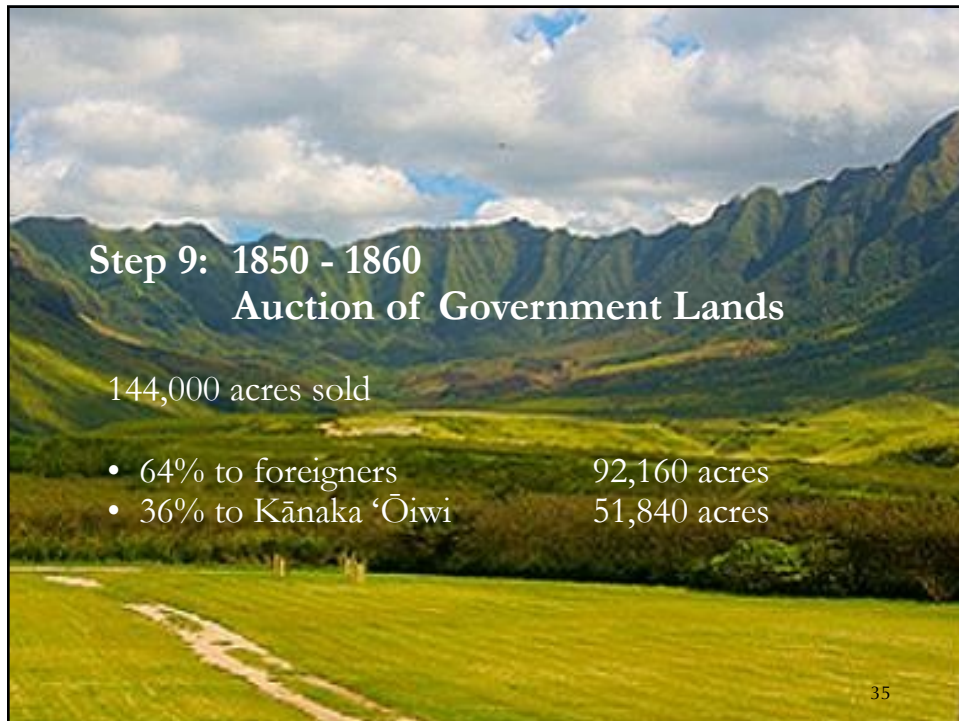
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Step 8: 1850 Foreigners Land Law

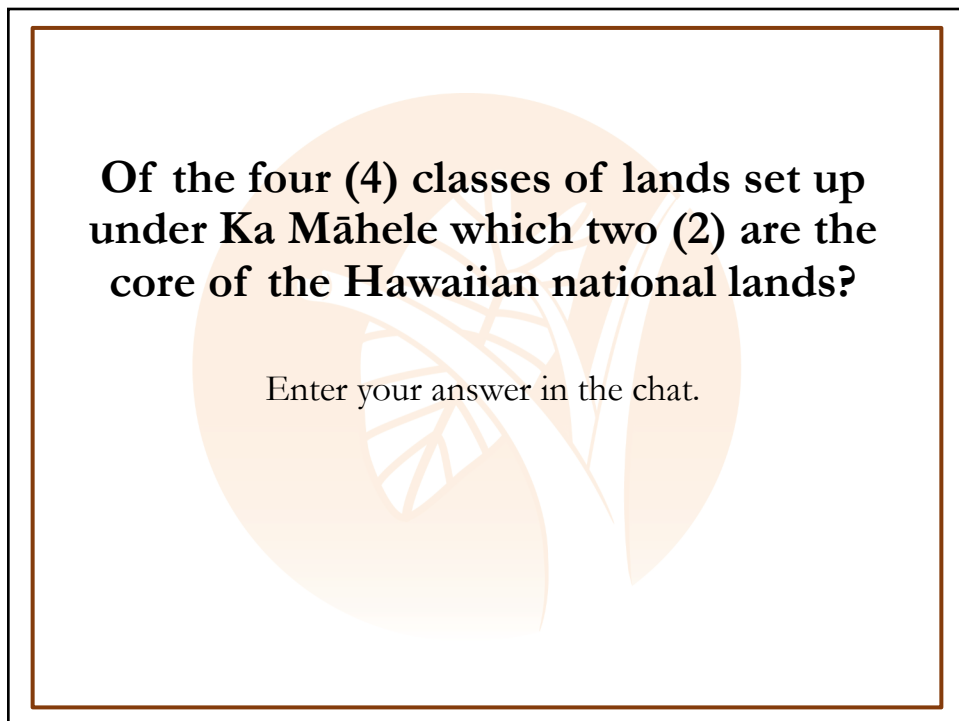
Act to abolish the disabilities of aliens to acquire and convey lands in Fee Simple.



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“Koe wale no na kuleana o na kanaka
e noho ana ma ua mau ‘aina la”



*“reserving only the right of the people
who live on the aforementioned lands”*

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Reserved Rights: Access through private and public lands for
subsistence, cultural and religious purposes



UNIQUE System of Private Land
NOT Completely Western

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1850 Privy Council Record

The king was concerned that a “little bit of land even with an allodial title, if they [the people] be cut off from all other privileges would be of very little value.”



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1850

[The] proposition of the King, which he inserted as the seventh clause of the law, as a rule for the claims of common people to go to the mountains, and the seas attached to their own particular lands exclusively, is agreed . . .

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1850 Kuleana Act - Section 7

When the landlords have taken allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house timber, aho cord, thatch, or ti leaf, from the land on which they live, for their own private use, should they need them but they shall not have a right to take such articles to sell for profit. They shall also inform the landlord or his agent, and proceed with his consent. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple;



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Petition of 54 makaʻāinana in Kāneʻohe



We are in trouble because we have no firewood and no laʻi, and no timber for houses . . . we, who live on lands which have no forest, we are in trouble. The children are eating raw potato because of no firewood, the mouths of the children are swollen from having eaten raw taro. We have been in this trouble for three months, the Konohikis with wooded lands here in Kaneohe have absolutely withheld the firewood and laʻi and the timber for houses.

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1851

**Section 7 of the Kuleana Act was amended
and is now HRS 7-1**

The requirement for tenants to obtain
the permission of the landlords was deleted.



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HRS 7-1

Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their land shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple;

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Ka Pa‘akai O Ka ‘Āina v. Land Use Commission

The Supreme Court outlined specific findings that a cultural assessment should provide:

(1) the identity and scope of ‘valued cultural, historical, or natural resources in the petition area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the petition area;



Ka‘ūpūlehu, Hawai‘i

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(2) the extent to which those resources, including traditional and customary native Hawaiian rights will be affected or impaired by the proposed action; and



Mo‘omomi, Moloka‘i

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(3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist.



Kalae, Hawai'i

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How is the system of land ownership in Hawai'i unique and different from land ownership in the U.S.?

Enter your answer in the chat box below!

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Coastal Natural and Cultural Resources



Nohili, Kaua'i

native plants and their habitat, native fauna and their habitat, native marine species, native aquatic species, spawning areas, fish spotting sites, turtle nesting areas, hunting areas, surfing sites, sandy shorelines, reefs, fishing areas, gathering areas, alkaline ponds, fishponds, salt pans, salt ponds, steam baths,

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Kalae, Hawai'i



Resources (cont.)

streams, ponds, springs, muliwai, taro irrigation networks, cultivation areas, caves, trails, sacred places, dunes, bridges, trails, historic walls, fishing shrines, other kinds of shrines, heiau, pu'uhonua, house sites, seasonal residential sites, fishermen's shelters, birthing stones, historic sites, burials and burial grounds, pō kāne routes, cultural use areas, places to experience spiritual visions and messages,

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Resources (cont.)

cliff jumping spots, holua slides, petroglyphs, places where souls wander or cross into the next world, domains of ancestral deities, bathing pools, lava tubes, landings for canoes and boats, basalt veins and adze making workshops, alae veins,

Kahekili's Leap
Kahakuloa, Lānaʻi



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Elements of Traditional & Customary Practice

(State of Hawaiʻi v. Pratt)

1. Purpose: provide for 'ohana & community; fulfill a kuleana related to subsistence, religious or cultural needs.
2. Trained in the practice by an elder or kumu.
3. Conducted in area to which the person has a traditional connection & is fulfilling a kuleana.



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Elements of Traditional & Customary Practice

4. Practitioner is taking responsibility for the resources and for the area
5. Is for subsistence. Not for commercial use
6. Manner is consistent with Native Hawaiian tradition and custom



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Guidelines for Responsibilities

1. Only take what is needed.
2. Don't waste natural resources.
3. Gather according to the life cycle of the resources. Allow the resources to reproduce. Don't fish during their spawning seasons.
4. Alternate areas to gather, fish and hunt. Don't keep going back to the same place. Allow the resource to replenish itself.



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5. If an area has a declining resource, observe a kapu on harvesting until it comes back. Replant if appropriate.
6. Resources are always abundant and accessible to those who possess the knowledge about their location and have the skill to obtain them. There is no need to overuse a more accessible area.
7. Respect and protect the knowledge which has been passed down intergenerationally. Do not carelessly give it away to outsiders.

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8. Be aware of the natural elements and stay alert to natural signs, e.g. falling boulders as a sign of flash flooding.
9. Share what is gathered with family and neighbors.
10. Take care of the kūpuna who passed on the knowledge and experience of what to do and are now too old to go out on their own.



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11. Don't talk openly about plans for going out to subsistence hunt, gather, or fish. Respect the resources.
12. Respect the spirits of the land, forest, ocean. Don't get loud and boisterous.
13. Respect family 'aumākua. Don't gather the resources sacred to them.



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Aloha and Mahalo

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